

## PANAMA

### CCPR A/39/40 (1984)

399. The Committee considered the initial report of Panama (CCPR/C/4/Add.8/Rev.1) at its 521<sup>st</sup>, 522<sup>nd</sup> and 526<sup>th</sup> meetings, held on 11 and 13 July 1984 (CCPR/C/SR.521, 522 and 526).

400. The report was introduced by the representative of the State party who acknowledged that his country's report was too brief. He said that he would therefore supplement the information in the report orally and that he would be prepared to supply detailed written responses to questions, as may be necessary. He explained that the brevity of the report did not reflect a lack of interest in human rights on the part of his Government, but rather the fact that Panama was a small developing country with many contradictions and only a recent democratic tradition. He outlined the country's constitutional evolution, the basis of which is the Constitution of 1904, and noted in particular that the provisions of the Covenant had been incorporated into domestic law by Law No. 14 of 28 October 1976 and that in April 1983 a new Constitution was adopted by a national referendum.

401. The representative provided a considerable amount of additional information concerning the situation in Panama with respect to the rights enumerated in the Covenant and stated, *inter alia*, that under Law No. 46 of 1956 citizens enjoyed a variety of judicial remedies such as habeas corpus and amparo; that the equality of sexes in the fields of education, health, the family and work was guaranteed by law; and that women had the right to vote since the 1940s. Nevertheless there was still much to be done to correct certain culturally and psychologically based discriminatory attitudes.

402. Despite its limited resources, Panama had made great efforts to promote education and health and to protect human life. As a result, infant mortality, for example, had declined over the past 20 years from 70 per 1,000 to 20 per 1,000. Fourteen per cent of the population, however, were still illiterate and there were great differences in the conditions of life of the various socio-economic groups.

403. The representative referred to a number of articles in the Constitution, in particular articles 19, 20, 21, 22, 28, 30, 35, 36 and 121 guaranteeing the rights enumerated in articles 9, 12, 14, 18, 19, 21, 22, 23, 25 and 26 of the Covenant.

404. The representative also commented on the situation of ethnic minorities within Panama (article 27 of the Covenant). While acknowledging that such groups were still experiencing certain educational and economic difficulties, he noted that there had been progress in other areas such as in the provision of health care to minorities and in increased political participation by native Amerindian groups. In conclusion, the representative expressed his intention, in view of the brevity of the initial report of Panama, to provide additional information to the Committee in the near future.

405. Members congratulated the representative of Panama on the excellent introduction which he had given and which had served as a supplementary report along the lines foreseen by the Covenant and the Committee's guidelines. They also expressed their appreciation to the Government of

Panama which was doing a great deal for international peace and security in Central America through the Contadora group. The Committee noted, however, that the report did not provide an adequate account of the human rights situation in the country and there was insufficient background information on the implementation of each of the articles of the Covenant. In this connection, it was asked what measures had been taken by the Government of Panama to give the widest possible dissemination to the provisions of the Covenant and other international human rights instruments to which it was a party; to what extent the constitutional provisions were actually applied; what real difficulties the Government had faced in the field of human rights; what progress had been made in solving Panama's problems; and what the prospects were for solving them in the future.

406. Some members expressed surprise that, despite Panama's being a developing country, the report did not refer to any difficulties in providing for the enjoyment of human rights. They inquired, in particular, whether the restrictions imposed on the production of banana and sugar in Panama by transnational companies or other large-scale buyers, which had resulted in unemployment, had interfered with the enjoyment of civil and political rights. More information was requested on the extensive constitutional amendments of 1983 and about their effect on the human rights situation in the country, as well as on the status of the Covenant.

407. With regard to article 2 of the Covenant, it was observed that according to the Panamanian Constitution one function of the Supreme Court was to pronounce itself on the constitutionality of laws and other acts, including those of the administrative authorities. In this connection, it was asked whether the Supreme Court had similar competence to ensure compliance with the requirements of the Covenant. Furthermore, the Constitution of Panama contained a number of important provisions designed to safeguard the rights of the individual, while a comparison with the Covenant showed that in some respects those rights were formulated more precisely in the Covenant than in the Constitution. Members of the Committee asked to what extent the Supreme Court was able to ensure that the requirements of the Covenant were complied with; whether steps had been taken to bring the relevant provisions of the Covenant to the attention of the administrative authorities, including the police authorities and prison officials; whether there had been cases before the courts in which the Covenant had been invoked; and whether there were any court decision, based directly on the provisions of the Covenant.

408. As regards article 3 of the Covenant, it was observed that, although the report noted that men and women were equal, there was no information on any measures taken to improve the status of women. Members asked what the proportion of women to men was in the universities, in public and private employment, in the legislative and the judiciary and what steps had been taken to integrate women into the development process both as participants and beneficiaries.

409. Commenting on article 4 of the Covenant and referring to article 51 of the Panamanian Constitution which permitted the suspension of certain rights in an emergency, members inquired, inter alia, whether habeas corpus and amparo could be suspended in a state of emergency in Panama. Members also inquired whether a detainee had any recourse against arbitrary or wrongful arrest. It was noted that the authority to terminate the state of emergency was vested in the legislature, if in session, and, if not in the cabinet. In this connection, it was asked whether the executive could continue to govern under emergency rules for an indefinite time if parliament had been dissolved, and whether there was a certain time-limit for the duration of a state of emergency beyond which

parliamentary approval required for its continuation.

410. As regards article 6 of the Covenant, members of the Committee asked what type of domestic disturbance threatening public order could lead to the imposition of the death penalty. Noting that implementation of article 6 of the Covenant involved the elimination of hunger and malnutrition, one member asked what agriculture development plans had been adopted to improve food production and its equitable distribution; what agrarian reforms had been undertaken and whether the Government had developed a nutritional food policy and established health centres.

411. In relation to articles 7 and 10 of the Covenant, the Committee praised the explicit prohibition in the Panamanian Constitution of any kind of torture and requested more information on provisions for the effective investigation of complaints by prisoners of torture by public officials on the existing arrangements for investigating complaints by detained persons regarding ill-treatment and on prison conditions. Further details were asked about the methods for obtaining confessions, and to what extent and at what intervals visits to prisoners were allowed by doctors, lawyers and family. Some members also requested information as to whether steps had been taken to prevent overcrowding in prisons and whether social assistance was provided to former prisoners in Panama.

412. With regard to article 8 of the Covenant, the Committee inquired whether legislation had been enacted to harmonize the Administrative Code and other laws of Panama with the ILO Convention on Forced Labour; and whether there had been a re-examination of police powers and judicial codes to prevent the administrative authorities from imposing punishment amounting to forced labour. It was also noted that under the Commercial Code seafarers who abandoned their vessels might be required under pain of imprisonment to complete the term of their contract and to work for one month without payment.

413. In connection with article 9 of the Covenant, members of the Committee pointed out that the National Guard was not only a military organization but also a State security body and that its functions included police duties. Referring to article 305 of the Constitution, it was asked whether the National Guard was empowered to arrest persons; whether it had its own detention centre; and whether there was any system preventive detention in Panama. Referring also to article 21 of the Constitution, the Committee inquired in what cases a person could be arrested without warrant and held incommunicado; and on what grounds bail could be refused and how often that was done. Members also noted that, as stated in the report, the provisions of the Covenant could be invoked before the courts which could enforce them directly. They wondered whether the courts enforced the right to compensation under article 9, paragraph 5, and article 14, paragraph 6, of the Covenant; what remedies were available against administrative acts; and whether the assistance free of charge of an interpreter was provided when required. Further information was requested as to what procedures were prescribed for the removal or transfer of magistrates; whether they were contained in laws enacted by parliament or rules decided by the executive; and what guarantees for the independence of judges.

414. With respect to article 13 of the Covenant, information was requested on the provisions for asylum in Panama.

415. In relation to article 14 of the Covenant, clarification was requested on articles 146 and 154

of the Constitution which stated that impeachment was applicable to judges of the Supreme Court, in addition to the President of the Republic. In this connection, it was asked how a legislative assembly could act as a tribunal within the terms of article 14, paragraph 1, of the Covenant. More information was requested concerning article 33 of the Constitution which appeared to permit the imposition penalties without trial since it provided that public officials could impose fines or arrest upon anyone insulting them or acting on contempt of their authority. Members wondered to what extent Panamanian public officials were subject to judicial control; how effective court procedures were; how often human rights issues had been invoked before the courts; and what the main issues were.

416. Commenting on article 18 of the Covenant, an explanation was requested on the legal provisions relating to freedom of religion in Panama; on the concept of Christian morality and the implications of not being a Catholic on the position and career of an individual.

417. As regards article 19 of the Covenant, members inquired what degree of Government control exercised over the news media, radio and television and to what extent low-income people were able to run a newspaper or have access to the mass media. More information was requested on legal limitations and on freedom of speech.

418. In connection with article 22 of the Covenant and with reference to Law No. 81 of 1978 concerning the activities of political parties, it was asked what criteria existed for the distribution of State subsidies for that purpose. Referring to the report of the ILO Committee of Experts which had recommended that Panama should make adjustments in its labour code in order to bring it into line with provisions of Convention No. 87 concerning freedom of association and protection of the right to organize (1948), it was asked whether any readjustments had been made in the labour code, particularly in articles 344, 346, 359 and 376. Clarification was also requested on whether there was any legal provision regarding the right of public employees to collective bargaining and to strike, especially in public undertakings which did not involve essential services, as well as whether there was any restriction on the formation of unions imposed by transnational corporations, especially on banana workers.

419. With respect to articles 23 and 24 of the Covenant, the Committee noted that article 51 of the Constitution provided for State protection of marriage and that Panama was unique in the region for its position in this regard. Members requested more information on the rights and responsibilities of spouses, the protection of children and the percentage of maternal and child mortality as well as on the work of the family protection agency. In connection with article 54 of the Panamanian Constitution, which stated that a de facto union had all the effects of a civil marriage after five years, it was asked what the philosophical reasons underlying that system were; what the position of the Government was concerning de facto unions, whether after five years they took on the characteristics of legal marriage and the children became legitimate; and whether there was any legal difference between a family resulting from a legal union and the family of a de facto union. Members of the Committee noted that minors under the age of 15 made up more than 40 per cent of the population of Panama and inquired whether there was any special protection for children whose parents or guardians abused their authority; and whether there were any special laws or provisions affecting them, particularly, particularly, concerning the treatment of young delinquents before the courts.

420. In relation to article 25 of the Covenant, members of the Committee noted that voting in Panama was not only a right but a duty and asked what sanctions were applied in the case of those not voting; whether there were fees for registration and, if so, how did that fact affect voter participation; whether the results of the election genuinely reflected the popular will; and whether provisions had been made for periodic elections to the National Legislative Council or for the postponement of elections.

421. As regards article 27 of the Covenant, it was noted that the Constitution contained far-reaching provisions in article 84, 86 and 123 for the protection of minorities in Panama, and it was asked how the Government had implemented the provisions of article 84 concerning the special study and literacy programmes for the indigenous population. Referring to the provisions in the Constitution dealing with agrarian measures, members inquired how these provisions had been applied, in particular, to the collective ownership of the land and comarcas, or to grants of land; what progress had been made in that regard; whether indigenous lands had suffered from the use made of them by the multinational companies; and what the environmental and cultural impact of a large foreign work force was on the Indian population. Furthermore, it was asked what percentage of population was constituted by tribal Indians in Panama; what place their tribal laws, customs and religious practices had in the Panamanian political and legal systems; and what percentage of them spoke Spanish. Referring to a report from the World Council of Churches on a specific case concerning the Guayni people and their future, one member requested detailed information on their conditions and the extent of their incorporation into the development process of the country and whether the Government was willing to suspend its series of projects within the Guayni territory until the rights of Guayni people had been more clearly demarcated.

422. Replying to questions raised by members, the representative of the State party informed the Committee that his Government was concerned with improving the provisions of the Constitution so as to meet not only legal requirements but also other factors which might contain valuable elements for progress and improvements; that in the course of Panama's history, there has been a cycle of political crisis; and that a radical change had taken place with the amendment of the Constitution in 1983 with people having the right to participate even in the most remote areas and to vote and make their opinions felt through the National Assembly. He also informed the Committee that the traditional divisions of the people into work brigades was encouraged for community-level projects to improve housing and to organize a health service in the form of vaccination and drinking-water campaigns, the construction of latrines and the training of women in nutrition and midwifery.

423. In connection with the article 1 of the Covenant, he stated that Panama supported independence movements in Africa and considered that the Palestinian people had a right to have a nation. He also said that Panama worked with the Contadora Group and considered that the situation in Central America must be solved by negotiation and not by military activity which merely postponed a solution.

424. Replying to questions raised under article 3 of the Covenant, the representative indicated that owing to rivalry between the sexes and a feeling of machismo, some persons in Panama believed that it was not right for women to occupy certain positions. However, women played an active role and had a broad participation in the economic, political and social life of country. He gave a number

of examples and statistics to that effect and pointed particularly to progress in the areas of teaching, education, medicine and services. As far as high ranking positions were concerned, he pointed out that there had been women Ministers for health, trade economy, a Vice -Minister for Foreign Affairs and that recently two presidential candidates had chosen women as candidates for the vice-presidency.

425. As regards article 4 of the Covenant, he stated that the suspension of rights and guarantees during a state of emergency had been kept within fixed time-limits, and as for the presumption of innocence, this guarantee had not been suspended since 1968.

426. With regard to article 8 of the Covenant, the representative said that the Government had submitted a bill to the National Assembly to ensure the respect of human rights in conformity with the provisions of this article.

427. Responding to questions raised under article 9 of the Covenant, he stressed that the National Defence Forces were subject to the law and responsible for the defence of the country and for public safety and that they were obliged to respect the present Constitution and to provide all necessary support to the authorities in their effort to protect the rights of individuals and of society.

428. Replying to questions raised under article 10 of the Covenant, the representative indicated that efforts had been made in recent years to improve prison conditions by a process of decentralization, with the establishment of small prisons whose aim was to facilitate communication with relatives and improve conditions for prisoners. Advances had also been made in the rehabilitation of prisoners through the use of psychologists and other experts but much still remained to be done.

429. In connection with questions raised under articles 23 and 24, he said that the Government had set up a working group on family legislation which had drafted a progressive family code for submission to the National Assembly. The head of the family was a woman in about 30 per cent of the households. The representative pointed out that in rural areas, however, women still occupied a traditional role and in some backward communities the level of participation of women in political and civic activities was low. Forty-five percent of the population was under the 15 years of age and all troubled children were treated by medical institutions with understanding so as to reunite them with their families and to facilitate their re-integration into the community.

430. With respect to article 25 of the Covenant, the representative stated that the direct presidential and legislative elections recently held in Panama were the first for 16 years; that an electoral court was constituted to supervise the elections which took place without irregularity; votes were counted in public in the presence of representative of the political parties and the outcome of recorded; and that numerous parties took part in the elections from left to right including the Communist Party.

431. Replying to questions raised under article 27 of the Covenant, the representative stated that the indigenous population participated fully in the National Assembly where they had 47 representatives. The minorities of Cuna were a well organized group which had migrated earlier this century and had established their own communities with a traditional hierarchy of chiefs. They also had their own doctors and nurses and justice was administered at the local level in their own language. Another indigenous group, the Bocas del Toro, was self-governing and had recently

requested that the region they occupied should be preserved. The representative said that the indigenous languages were fully recognized, bilingual textbooks had been prepared for use in schools, and the Spanish language was gradually taught in the early years at the primary schools.

432. Finally, the representative of the State party recognized that it had not been possible to reply exhaustively to all specific questions asked and stated that he would convey the Committee's questions and his replies to his Government so that the competent authorities would complete the information and rectify any mistakes. He felt sure that his Government would be greatly helped by the questions raised and comments made in its efforts to perfect laws and institutions and to comply more fully with the provisions of the Covenant and human rights in general.

433. Members of the Committee thanked the representative of the State party for his most interesting and frank statement and expressed the hope that the additional documentation and explanations promised by him would cover all the questions raised during the consideration of his country's initial report.

434. Subsequent to his appearance before the Committee, the representative of Panama provided additional written replies to questions raised during the consideration of the report by several members, as well as certain legal texts. It was agreed that additional replies to question addressed to individual members would be compiled by the Secretariate into a document, to be made available to the Committee. The Committee expressed gratification to the Government of Panama for having provided additional information so promptly.

## CCPR A/46/40 (1991)

415. The Committee considered the second periodic report of Panama (CCPR/C/42/Add.7 and 11) at its 1051<sup>st</sup> to 1054<sup>th</sup> meetings, held on 4 and 5 April 1991 (see CCPR/C/SR.1051-1054).

416. The report was introduced by the representative of the State party, who observed that on 20 December 1989 a democratically elected Government had taken power from the military dictatorship that had ruled since 1968. The current Government had the political will to promote human rights and had taken steps to improve the human rights situation in Panama, although most of the people in Panama were somewhat ignorant of the international system for the protection of human rights.

### Constitutional and legal framework within which the Covenant is implemented

417. With regard to that issue, members of the Committee wished to know what the status of the Covenant was relative to Panamanian domestic legislation; how conflict between a provision of the Covenant and domestic law would be resolved; whether a subsequent law could suspend the Covenant; whether provisions of the Covenant could be invoked directly before the administrative authorities and courts; whether there had been any instances where this had actually been done and, if so, with what results; whether the removal, pursuant to Act No. 33 of 1974, of one of the generic remedies applicable in administrative matters had in fact been advantageous to individuals; and what activities relating to promotion of greater awareness on the part of the relevant administrative authorities as well as the public at large of the provisions of the Covenant and the Optional protocol had been undertaken.

418. In addition, members of the Committee wished to know whether a specific legal provision had been adopted to incorporate the Covenant into Panamanian law; whether the Government would consider seeking a declaratory judgement on the status of the Covenant from the Supreme Court; and why individual Panamanians did not invoke the Covenant, and submit communications to the Committee. Further information was sought regarding the ongoing process of constitutional reform, particularly with regard to the abolition of the army, the establishment of a police force responsible for national security, and changes in the judiciary. Members of the Committee also wished to have information on the legal situation prevalent in Panama as a result of the invasion, including the measures adopted to guarantee to citizens the rights set forth in the Covenant, especially in view of the presence of foreign troops that exercised internal control with the consent of the Government; on the legal basis of confiscation, without legal process, of property belonging to alleged collaborators with the former regime; on any steps proposed to compensate victims in various areas of Panama city and colon whose homes and workplaces had been destroyed by bombing; and on the recent actions taken to investigate cases of disappearances and deaths.

419. With regard to remedies, members of the Committee wished to know how amparo operated; how often the right of amparo had been exercised by individuals; what the relationship was between habeas corpus and amparo and whether a detainee could in fact seek relief through both measures; what safeguards were offered to individuals under the Administrative Code; whether the right of appeal against a decision of the administrative court still existed; and to what extent individuals, especially poor people, had access to the courts and to legal assistance. They also asked what the



Government's policy was with regard to the treatment of those who had been associated with the past repression and whether the Government of Panama would indeed have full sovereignty over the Panama Canal by the year 2000.

420. In his reply, the representative said that the Covenant had constitutional status and that no subsequent law could derogate from it. The Covenant could be invoked directly before the administrative authorities and courts in Panama, which had been done particularly during the last three or four years of the dictatorship. Many habeas corpus actions had invoked the Covenant as well as domestic legislation, but the Supreme Court had never in its rulings taken into account the provisions of the Covenant. Reforms under Act No. 33 of 1974 had been beneficial to individuals since it had speeded up administrative procedures and provided new administrative remedies. Act No. 2 of 1984 had established mandatory teaching of human rights in all schools, but had never been put into effect. However, the Ministry of Education was now working, with the assistance of non-governmental organizations, to promote the teaching of human rights at all levels of education. The Government had also requested technical assistance and advice from the United Nations Centre for Human Rights, especially with regard to the administration of justice in Panama.

421. Replying to other questions, the representative stated that his Government's chief concern was for the consolidation of democracy. That required a reconciliation of the conflicting elements within the country and was reflected in the manner in which former officials were being prosecuted. Many people had been detained by United States forces and subsequently turned over to the Government, and those against whom there were no charges had been released. Those still under detention had been charged with offences, were not ill-treated and were represented by legal counsel. There was a great ignorance of penal law in the country because the law had fallen into neglect. As a consequence of the reorganization of the judiciary and the Prosecutor's Office, 40,000 criminal cases had been turned over to the courts. Provisions for access to free legal aid had been made in legislation enacted in 1983, but practical arrangements still had to be worked out. Access to the courts and to legal assistance, especially by the poorest members of the society, was a complicated problem linked to the legacy of military dictatorship. The Government had recently introduced a new Legal Code and had begun working on regulations to ensure the independence of the judiciary. Habeas corpus and amparo were both intended as guarantees of human rights, but the former was the specific remedy guaranteeing individual freedom and the only one for which detained persons could apply. The Government had proposed to abolish the 1974 law establishing an office to investigate administrative errors and was working on a series of regulations to ensure proper conduct by the police, especially in the use of firearms. The provisions of the Panama Canal Treaty would be respected and complied with.

#### Right of self-determination

422. In connection with that issue, members of the Committee asked whether any measures had been taken to prevent public and private support for the apartheid regime of South Africa; what was Panama's position with regard to the rights of the Palestinian people; and whether the policy outlined in paragraphs 11 and 12 of the report still applied. They also wished to know whether the Government regarded self-determination in its domestic dimensions as requiring a continuing system of parliamentary rule; what was the position of Panama on the principle of non-interference when the next national elections were due; and what measures were envisaged to ensure that in those

election there was a proper choice between political parties.

423. In reply, the representative said that diplomatic relations with South Africa had been suspended in 1985 and that the Government was considering the imposition of measures to punish violations of economic sanctions against South Africa, including measures against Panamanian-registered ships. Panama maintained diplomatic relations both with Arab States and Israel. Its position on their conflict was that Israel should withdraw from the occupied territories and that there should be a recognition of and security for Israel as part of an overall Middle East Peace settlement. Answering other questions, the representative stated that the Government had a binding rule that precluded recognition of any Government that came into power as a result of a military coup or through electoral fraud. The next national elections were due to be held in May 1994, and a new electoral code would be needed to ensure that they would be democratic.

#### State of emergency

424. With reference to the state of emergency, members of the Committee wished to know whether there had been any proclamation of a state of emergency since the consideration of the initial report in 1984 and, if so, what rights had been suspended; whether the Secretary-General of the United Nations had received a formal notification of the states of emergency proclaimed; whether any decree had been enacted suspending constitutional rights during and after the invasion by United States forces; whether the guarantee against confiscation of property was among the constitutional guarantees that could be suspended; whether any persons had been deprived of their property since the last report; and what was the meaning of Decree No. 50 of February 1990, which repealed the article placing restrictions on the judicial remedy of amparo.

425. In reply, the representative stated that states of emergency had been declared in 1987 and 1988; on both occasions the Government had suspended all guarantees subject to suspension under the Constitution and had notified the Secretary-General. The guarantee of private property acquired in accordance with the law could be suspended, whereas the guarantee against confiscation of property could not be suspended in a state of emergency. Formerly, the Judicial Code had prohibited the exercise of remedy of amparo against decisions by judicial officials, but Decree No. 50 of February 1990 now made this possible. The Government considered that the suspension of constitutional guarantees after the invasion by the United States would have increased the danger of human rights violations.

#### Non-discrimination and equality of the sexes

426. With reference to that issue, members of the Committee wished to be provided with information concerning measures taken, since the consideration of the initial report, to improve the status of women, particularly in rural areas. It was also asked in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared to those of citizens.

427. Members of the Committee wished to know what types of post were not open to women; what obstacles stood in the way of women's advancement; what resources had been made available for the program of affirmative action on behalf of women; what was the current situation of aliens, in particular those of Chinese origin, and what had been done for aliens who had suffered

discrimination and ill-treatment; whether the special status accorded to Christianity did not in fact constitute discrimination against other religions; what was the rationale behind the different conditions for divorce applicable to men and women; whether women enjoyed equal participation in respect of those disposal of conjugal property; why Panamanians who were citizens by birth enjoyed a higher status than those who were not; and what was the position of persons seeking asylum in embassies in Panama, particularly military personnel accused of serious offences.

428. In reply to questions posed by members of the Committee, the representative explained that the Ministry of Agriculture Development was establishing women's organizations in rural areas that were financially supported by a national organization for rural development. In promoting the advancement of women, the Government encountered economic and cultural obstacles; the latter, in particular, would not easily be overcome. Aliens did not have political rights and were subject to special conditions in the exercise of certain activities. Certain public service posts were reserved for Panamanian nationals and although any person was free to exercise any profession or trade, subject to the relevant regulations, only Panamanians nationals were entitled to practise law and retail trading.

429. In reply to other questions, the representative pointed out that earlier reports had concentrated on legislation and constitutional guarantees and had failed to give a true picture of the real situation regarding human rights in Panama. For example, the allocation of resources to social programmes had been hampered by extravagant military spending. No restrictions were placed on the profession of religions other than the Roman Catholic faith and they also enjoyed full status in law. The legal grounds for divorce had been amended and the Civil Code now placed men and women on an equal footing before the law in that regard. Men and women also enjoyed equal rights with regard to matrimonial property and inheritance. The only difference between citizens who were Panamanian by birth and those who were naturalized was that the President of the Republic, judges of the Supreme Court, the Attorney-General and the Comptroller General had to be Panamanians by birth. Panama recognized the right to asylum and believed that a solution to current problems might be found in the use of machinery established under the Charter of the Organization of American States. Large sums of money had been illegally disbursed to Chinese nationals, and a Commission had been established to investigate the problem.

#### Right to life

430. With regard to that issue, members of the Committee wished to know whether there had been any complaints concerning alleged disappearances or killings caused by the police or the security forces or undertaken with their support and, if so, whether such allegations had been investigated by the authorities before, during and after the invasion and with what result; what cooperation the Government had given in order to open the common graves allegedly found in various places and to compensate the victims' relatives; what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of those rules and regulations and, if so, what measures had been taken to prevent their recurrence; what steps had been taken to expand public health facilities and health care, particularly in rural areas; what was the current rate of infant mortality and what measures had been taken to reduce that rate; and what had been done by the Panamanian Government to prevent the spread of HIV/AIDS.

431. Members of the Committee also wished to know what the number of casualties was resulting from the 1987 riots and the events of December 1989; whether excessive use of force by members of the police, army or invading troops in those cases had been investigated; whether the offenders could be held criminally liable under local criminal jurisdiction; whether a special office had been set up to handle questions from the family members of persons who had died in December 1989; what regulations governed police conduct and whether they were in conformity with the United Nations Code of Conduct for Law Enforcement Officials; whether Panama had independent machinery for investigating the use of excessive force by police officers; and whether Panamanian situation had ever been reviewed by the Working Group on Enforced or Involuntary Disappearances or the Special Rapporteur on summary Executions. In addition, it was asked when Panamanian abortion laws considered life to begin; what was the environmental policy of Panama; whether Panama had a drug problem and what steps had been taken to discourage drug trafficking; whether any measures had been taken to control the spread of HIV infection by prostitutes; and whether the Government was seeking to create jobs for the poverty-stricken sectors of Panamanian society.

432. In reply to questions posed by members of the Committee, the representative said that cases of disappearances and killings involving members of the armed forces had been investigated and it had been proposed to establish a special prosecutor's office to investigate such cases. It was hoped that new regulations relating to the use of weapons by police and security forces would soon be introduced. Most endemic tropical diseases and infectious parasitic diseases had been brought under control. The infant mortality rate stood at 26 per 1,000 live births. Measures to prevent the spread of AIDS focussed on a public information campaign, including publicity about the use of condoms. A special problem relating to drugs was that Panama served as a transit point between North and South America. The financial reserves of the public health system had been depleted and the Government was taking steps to restore the health insurance system.

433. Responding to other questions, the representative said that the Office of the Attorney-General had responsibility for investigating deaths and disappearances and other human rights violations that had occurred over the past 21 years. The actual number of deaths and disappearances seemed, in reality, to be rather low. Over 60 per cent of young people in Panama used drugs. The Government was taking action on a range of drug-related problems and was achieving progress. Abortion was an offence under the Criminal Code punishable by imprisonment. Both the women involved and those performing abortions were frequently punished. Prostitutes were required to undergo medical examinations every three months.

#### Treatment of prisoners and other detainees

434. With reference to that issue, members of the Committee asked what controls had been instituted to ensure that persons arrested or detained were not subjected to torture or to cruel, inhuman or degrading treatment and what arrangements existed for the supervision of places of detention by the Department of correction or the office of the Attorney-General; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with; whether those provisions had been made known to the police, armed forces, prison personnel and other persons responsible for holding interrogations; whether the relevant regulations and directives were known and accessible to prisoners; whether the Government had taken steps to ensure that the police would now treat prisoners differently; whether any prison deaths had been due to shortages of food and

medical attention; and whether there was any problem of overcrowding in prison, and, if so, what measures were being taken in response.

435. In his reply, the representative said that torture had been almost the exclusive preserve of the military authorities. The Government had begun a series of seminars and courses to improve the treatment of prisoners held in penal institutions, in addition to ending control of prison establishments by the military. Copies of the United Nations Standard Minimum Rules had been provided to the relevant officials and the Government had sought from the outset to ensure that judicial officials, members of the Public Prosecutor's Office, the police and all prison personnel were familiar with them. However, much remained to be done and the Government hoped to carry out training seminars on the subject. Detainees were sometimes interviewed by the press, and now that they were aware of their rights, prisoners were attempting to stage prison uprising or demanding better conditions.

#### Liberty and security of the person

436. In connection with that issue, members of the Committee wished to know whether the planned legislative amendments with regard to administratively imposed compulsory labour had been enacted; whether the Committee's concerns regarding the apparent incompatibility of article 33 of the Constitution with article 9 (1) of the Covenant had been taken into consideration by the Panamanian authorities; what were the reasons for detention in non-criminal cases; what the maximum period was of remand in custody and detention pending cases; what the maximum period was of remand in custody and detention pending trial; how quickly after arrest a person's family was informed and how soon after arrest a person could contact a lawyer; whether the conditions of payment of damages envisaged in article 129 of the Penal Code were deemed compatible with article 9 (5) of the Covenant; and whether there had been any cases where the State had been required to pay civil damages to detainees. Members of the Committee also wished to know about the situation of reported asylum seekers in various diplomatic missions, and what the Government's grounds were for not granting safe conduct pursuant to the Inter-American Convention on Asylum.

437. Replying to questions put forward by members of the Committee, the representative noted that the Administrative Code related only to minor offences for which the term of imprisonment was one year or less. Since such sentences were no longer being applied, that Code had fallen into disuse. ILO Convention No. 29 (Forced Labour), to which Panama was a party, excluded work or service performed pursuant to a sentence handed down as part of the judicial process. Regarding the possible incompatibility of article 33 of the Constitution with article 9 (1) of the Covenant, the situations envisaged were very specific and applied only to exceptional circumstances. He could recall no cases where those constitutional and subsidiary legal norms had been enforced. During the past 14 months no one had been detained for reasons other than crimes, except for those detained under Act No. 112 for administrative infractions, but that Act would probably be repealed shortly. No distinction was made between remand in custody and detention pending trial. Pre-trial detention applied only to offences carrying prison sentences and could last throughout the investigation and trial process. Detention in other cases would normally last between two and four months, but in view of the large number of cases and shortage of resources, the judicial process was often not completed within that period. The Government had enacted a law aimed at relieving prison overcrowding and dealing with the long periods of detention by providing alternatives to

incarcerations. All persons placed under arrest now had the right to legal counsel in all police and judicial proceedings and could be visited by family members from the moment of arrest. The Penal Code required the State to pay civil damages where the defendant succeeded in obtaining the general dismissal of proceedings after having undergone more than one year of pre-trial detention. The State incurred civil responsibility only when a special agent had been involved, but prosecutors, judges or other officials unlawfully detaining an individual were not considered to be special agents.

#### Right to a fair trial

438. With regard to that issue, members of the Committee asked for a clarification of article 43 of the Constitution allowing for laws to have retroactive effect, *inter alia*, for reasons of “public order or social interest”. They also wished to know what were the terms of Cabinet Decree No. 17 of 24 January 1990 reforming and repealing provisions suspending the legal profession; what measures had been taken to safeguard the independence of the judiciary and the Public Prosecutor’s Office and how extensive the reforms affecting the criminal investigation department and the Public Prosecutor’s Office were; what developments had occurred with regard to the bill dealing with reform of the prison system; how effective constitutional and legal guarantees were in respect of the independence of magistrates and judges in the exercise of their functions; and how the Bar was organized and functioned.

439. In addition, members of the Committee wished to know why article 9 (5) of the Covenant could not be invoked directly in cases not covered by article 129 of the Penal Code or precluded by other legislation and whether that article had ever been invoked in fact and, if so, with what result; what were the consequences of the Supreme Court’s declaring a law unconstitutional; what types of provisions could be repealed and replaced by the Supreme Court; whether the judgements of the Supreme Court and its Chambers could be challenged through a writ of unconstitutionality; what were the conditions prescribed by law relating to the discharge or suspension of magistrates and judges and were they of such nature as to remove any reluctance by judges to act independently; what steps were envisaged to strengthen the independence of the judiciary; how many political prisoners were currently being held; whether the decree governing demonstrations could be repealed on grounds of incompatibility with the Covenant; what were the possibilities for political exiles to return to Panama, and under what conditions were drug addicts or the mentally ill detained.

440. The representative of the State party stated in his reply relating to the retroactivity of laws that the phrase in the Constitution concerning “public order and social interest” had led to abuses in the past, and it was hoped that in any future reform of the Constitution there would be an opportunity to remove those words. A set of draft rules was expected to be adopted by the Judicial Council by the end of the year relating to requirements for admission to the judicial profession. Under the previous regime, judicial appointments had been made without regard to such requirements. The criminal investigation department had been reorganized as the judicial police department with essentially the same mandate. The Legislative Assembly was expected to adopt a law making that department accountable only to the Public Prosecutor’s Office and the judiciary and no longer to the executive branch. The process of weeding out many undesirable members of the criminal investigation department was continuing. The reforms carried out in the Public Prosecutor’s Office were in their final phase, with the dismissal of certain prosecutors on the basis of incriminating information and the appointment of their replacements. A bill dealing with the prison system had

been drafted and was currently being considered by the legislative branch. There was a chapter of the Bar in each of the country's nine provinces. Membership of the Bar consisted of about 3,500 practising lawyers, and it had recently been a critical factor in the development of new legislation.

441. Replying to additional questions posed by members of the Committee, the representative explained that it was difficult at the present time to establish the legal ranking of the Covenant vis-a-vis the Constitution because of the division of opinion between internationalists and constitutionalists. The forthcoming constitutional reform would not help to solve that problem, as it would focus on the elimination of militarism. There were no persons imprisoned for their political views in Panama and no exiles, as no one had been expelled. Act No. 112 of 1974 had not yet been repealed. Court judgements were not open to writs of unconstitutionality but were subject to amparo. Rulings of unconstitutionality repealed specific laws but did not restore pre-existing situations. Insane persons or those under the influence of drugs could be detained in order to safeguard their lives or health.

#### Freedom of movement and expulsion of aliens

442. In connection with that issue, members of the Committee wished to know what was the distinction between expulsion and deportation; whether an appeal against an expulsion had suspensive effect; whether the denial of the possibility of appeal from expulsion orders issued for reasons of health and public policy was compatible with article 13 of the Covenant; which illnesses could constitute grounds for the expulsion of aliens for reasons of health; and whether the Government could arbitrarily decide to resort to expulsion rather than deportation.

443. In reply, the representative said that expulsion orders were used where foreigners who had met the requirements for entry into the country were found to be undesirable on various grounds, including that of national security. Deportation orders applied where aliens had not complied with the requisite legal formalities for entry or had stayed beyond the period permitted by their visas. Applications for review of an expulsion order could be made to the authority issuing the order, and appeals could be made to a higher authority. Both applications had suspensive effect, and the remedy of habeas corpus was also available. Expulsions on the grounds of public health were rare and the remedy of amparo was available.

#### Right to privacy

444. Concerning that issue, members of the Committee wished to know whether tapping of private telephone lines had been prompted by security considerations.

445. In reply, the representative said that the police could be authorized to carry out wire-tapping operations in criminal investigations.

#### Freedom of religious and expression; prohibition of propaganda for war and of incitement to national, racial or religious hatred

446. In connection with those issues, members of the Committee wished to know what procedures existed for legal recognition and authorization of various religious denominations; whether article

25 of the Constitution, which provided for freedom of worship subject to respect for Christian morality and public order, affected such recognition, especially as regards non-Christian religions; in what respect, if any, the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; what was the practice in respect of censorship in Panama; how effective legal guarantees were relating to freedom of expression, particularly political dissent; what had been the outcome of studies undertaken by the National Advisory Commission to review regulations governing the mass media, whether any regulations had been adopted on the basis of the Commission's report; and whether State funding was ever withheld from universities in order to secure the employment or dismissal of certain persons.

447. In reply, the representative said that the legislation on freedom of expression was currently under review and that those media that had been closed down or confiscated had been reopened and restored to their rightful owners. It was not necessary to be member of the National College of Journalists in order to exercise the profession of journalism, which was open to all. The bill that was to be submitted to the Assembly, on the basis of the conclusions of the National Advisory Commission established to review the regulations governing the mass media, had already been subject to a wide-ranging national debate.

#### Freedom of assembly and association

448. With regard to that issue, members of the Committee requested information concerning the law and practice relating to the establishment and functioning of political parties and trade unions; on any relevant restrictions; and on the law and practice relating to the State's involvement in financing political parties pursuant to article 135 of the Constitution. They also wished to know whether any political parties had been banned since the consideration of the initial report and how equality of treatment of the various political parties was ensured. In addition, members wished to know whether the boundaries of electoral districts were drawn in a manner that ensured equitable representation of different political parties in the Government; how the requirement to vote was enforced; whether the Government operated under a policy of openness; whether government workers who had participated in a demonstration in December 1990 had been dismissed by virtue of Law No.25 of 1990; whether any conclusions had been reached in the review of the constitutionality of that law; and whether there were any possibilities that exceptions to the right to strike would be eliminated. Furthermore, observing that the banning of peaceful demonstrations as well as the sanctions imposed on their participants might violate the rights guaranteed under the Covenant, members wished to know whether orders expelling persons who dissented from the Government from public or trade union office going to be lifted.

449. In reply, the representative said that in order to be recognized as a political party, a grouping had to have a minimum support base of some 3.5 per cent of the electorate and a democratic internal structure, with decisions taken by vote. No political parties had been banned since the consideration of the initial report, and six political parties currently met the legal requirements to be recognized as such. Trade union rights applied to private enterprises but not to public sector organizations. Owing to the transfer of private enterprises to the public sector, an anomalous situation had arisen since the Government had allowed the trade unions in those enterprises to remain in existence. The financing of political parties was governed by article 135 of the Constitution, which had remained without effect as a result of failure to agree on provisions to translate it into practice. The electoral



system comprised elements of district and proportional representation. The Constitution recognized the right to strike, except that the law could impose restrictions in the case of public service employees. There was no general policy of dismissing public employees from their posts for participating in political activities that criticized the Government; the matter was a constitutional issue.

#### Protection of the family and children

450. With reference to that issue, members of the Committee asked whether the draft Family Code had been enacted and what were its main provisions. They sought information on the activities and accomplishments of the Authority for the Child and the Family; on practical measures taken to enhance the enjoyment by women of their equal rights during marriage; and on any plans to remove the discriminatory provisions in respect of divorce contained in the Civil Codes. Members also wished to know whether Panamanian law provided safeguards against child abuse and why the State did not make allowances to large families.

451. Answering questions posed by members of the Committee, the representative said that the draft Family Code was under review and the Social Welfare Department of the Ministry of Labour was devising an ambitious plan in various spheres of concern to the child and the family. Discrimination on the basis of sex was unconstitutional, but many cultural problems still subsisted. In that connection, an education campaign was being formulated to make women more aware of their legal rights. All discriminatory provisions in respect of divorce had been abolished, and recent legislation also gave women the right to keep their own surnames upon marriage.

#### Concluding observations

452. Members of the Committee welcomed the objectivity and frankness shown by the Panamanian delegation and recognized the problem associated with the transition to democracy after a long period of dictatorship. The report had not been prepared according to the Committee's guidelines and was incomplete. Members were of the view that special efforts should be directed at repealing discriminatory legislation and expediting judicial proceedings against persons held in custody. Serious concerns were also expressed with regard to the expulsion procedure, the infant mortality rate, the age for marriage, restraints on trade and the exercise of professions by aliens, unionization, the dissemination of the Covenant and the treatment of Chinese nationals.

453. In concluding the consideration of the second periodic report of Panama, the Chairman thanked the delegation for its contribution to the constructive dialogue. The Panamanian delegation's presentation had to some extent compensated for the inadequacy of the report, and it was hoped that the State party's third periodic report would be in conformity with the Committee's guidelines.